

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Michael Malone,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:16cv1160
vs.	:	
	:	Judge Susan J. Dlott
Warden, Chillicothe Correctional	:	
	:	
Respondent(s).	:	

ORDER

The Court has reviewed the Report and Recommendation of United States Magistrate Judge Stephanie K. Bowman filed on February 6, 2018 (Doc. 8), to whom this case was referred pursuant to 28 U.S.C. §636(b), and noting that no objections have been filed thereto and that the time for filing such objections under Fed. R. Civ. P. 72(b) expired February 28, 2018, hereby ADOPTS said Report and Recommendation.

Accordingly, respondent's motion to dismiss (Doc. 5) is GRANTED. The petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 (Doc. 1) is DISMISSED with prejudice on the ground that the petition is time-barred under 28 U.S.C. §2246(d).

A certificate of appealability will not issue with respect to any of the claims for relief alleged in the petition, which this Court has concluded are barred from review on a procedural ground, because under the first prong of the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-485 (2000), "jurists of reason" will not find it debatable whether the Court is correct in its procedural ruling. Accordingly, petitioner's motion for a certificate of appealability is DENIED. (Doc. 7).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the

Court will certify pursuant to 28 U.S.C. §1915(a)(3) that an appeal of any Order adopting the Report and Recommendation will not be taken in “good faith,”, therefore petitioner is DENIED leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. 24(a); *Kincade v. Sparkman*, 117 f. 3d 949, 952 (6TH Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott
Judge Susan J. Dlott
United States District Court